

IN THE DRAWINGS

The attached sheet of drawings includes changes to Fig. 25. This sheet, which includes Fig. 25, replaces the original sheet including Fig. 25.

Attachment: Replacement Sheet

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-26 are pending in this case. Figure 25 is amended, Claims 1-18 are amended, and new Claims 25 and 26 are added by the present amendment. Amended Claims 1-18 and new Claims 25 and 26 are supported by the original disclosure and, thus, add no new subject matter.

Figure 25 is amended to correct informalities.

The outstanding Office Action rejected Claims 1-24 under 35 U.S.C. § 103(a) as being unpatentable over Jorgensen (US Pub. No. 20020099854) in view of Border et. al. (US Pub. No. 20020071436, herein "Border").

Applicants and Applicants' representatives thank Examiners Gonzalez and Corsaro for the courtesy of an interview with Applicants' representatives on March 22, 2007. During the interview, elements of the pending claims were discussed and clarified. Examiner Gonzalez indicated that the claims appear to overcome the cited references and agreed to reconsider the rejections of record after formal submission of the present response. Thus, Applicants respectfully traverse the rejection.

The present application describes packet communication, generally, and addresses the fact that, in the Path MTU discovery method standardized by the Internet Engineering Task Force, increasing packet size due to the addition of a header at each Mobility Anchor Point can cause multiple "Packet Too Big" messages and multiple attempted retransmissions for a single packet.

Amended Claim 1 recites a **destination node** configured to receive an advertisement of path information, determine whether discovery of Path MTU should be executed based on the advertised path information, and set Path MTU based on the advertised path information.

Jorgensen describes wireless base station communication through a packet-centric protocol such as TCP/IP with a goal of developing resource allocation that optimizes end-user Quality of Service. However, as conceded in the outstanding Office Action, Jorgensen does not explicitly teach any of the elements of any of the pending claims.

The outstanding Office Action asserts that Path MTU discovery, execution, and announcement are inherent in TCP and TCP/IP. While Path MTU discovery is described by the Internet Engineering Task Force, Applicant respectfully argues that a **destination node** configured to determine **whether** a discovery of a Path MTU of the path from the correspondent node to the destination node should be executed, based on the path information, or configured to **set** the Path MTU on the basis of the path information is not taught by the Task Force and is *not* inherent to TCP or TCP/IP.

A proper assertion of inherency requires a rationale or evidence tending to show inherency.<sup>1</sup> The Examiner is required to provide “a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.”<sup>2</sup> In this case, the outstanding Office Action would have had to show that Path MTU discovery, execution and announcement are “*necessarily present*” in the system described by Jorgensen or in TCP- or TCP/IP-based communication systems. The outstanding Office Action did not present any evidence of inherency beyond stating that the claim elements are inherent.

Further, Border does not cure the deficiencies of Jorgensen. Border describes a communication system with a platform containing a spoofing apparatus that provides performance enhancing functions. Border handles the problem of data segments exceeding maximum segment size by including in the TCP Spoofing Kernel, within the performance enhancing platform, a capability to resize data segments to be sent to the local host, the

---

<sup>1</sup> MPEP § 2112 (IV).

<sup>2</sup> MPEP § 2112 (IV) (citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

destination node. Border does not teach or suggest a destination node configured to determine whether a discovery of a Path MTU of the path from the correspondent node to the destination node should be executed, based on the path information or configured to set the Path MTU on the basis of the path information.

Consequently, Claim 1 and all claims dependent therefrom are patentable over Jorgensen in view of Border.

Amended Claim 2 recites a destination node configured to receive an advertisement of information about an entry point of multiple tunnels, determine whether discovery of Path MTU should be executed based on the number of entry points of the multiple tunnels, and calculate Path MTU based on the number of entry points of the multiple tunnels.

Jorgensen does not teach or suggest a destination node as recited in Claim 2. In addition, a destination node as described in Claim 2 is *not* inherent to TCP or TCP/IP. Further, Border does not cure the deficiencies of Jorgensen.

Therefore, Claim 2 and all claims dependent therefrom are patentable over Jorgensen in view of Border.

Amended Claim 3 recites a destination node configured to receive an advertisement of a link MTU of a link connected to each node on a path, set a Path MTU out of the received link MTUs, and determine whether a discovery of a Path MTU should be executed based on the set Path MTU.

Jorgensen does not teach or suggest a destination node as recited in Claim 3. Again, these elements are also *not* inherent in TCP or TCP/IP. In addition, Border does not cure the deficiencies of Jorgensen with respect to these claims.

Consequently, Claim 3 and all claims dependent therefrom are patentable over Jorgensen in view of Border.

Claim 19 recites a destination node comprising a means of receiving an advertisement of path information, determining whether discovery of a Path MTU should be executed based on the path information, and setting the Path MTU based on the path information. Jorgensen and Border do not teach or suggest the recited elements, and the recited elements are not inherent to TCP or TCP/IP. Therefore, Claim 19 is patentable over Jorgensen in view of Border.

Claim 20 recites a destination node comprising a means for receiving an advertisement of information about an entry point of multiple tunnels, determining whether a discovery of a Path MTU should be executed based on the number of entry points of multiple tunnels, and calculating the Path MTU based on the number of entry points of multiple tunnels. Jorgensen and Border do not teach or suggest the recited elements, and the recited elements are not inherent to TCP or TCP/IP. Therefore, Claim 20 is patentable over Jorgensen in view of Border.

Claim 21 recites a destination node comprising a means for receiving an advertisement of a link MTU of a link connected to each node on a path, setting a Path MTU out of the link MTUs, and determining whether a discovery of a Path MTU should be executed based on the Path MTU. Jorgensen and Border do not teach or suggest the recited elements, and the recited elements are not inherent to TCP or TCP/IP. Therefore, Claim 21 is patentable over Jorgensen in view of Border.

Claim 22 recites a Path MTU discovery method comprising steps of receiving an advertisement of path information, determining whether a discovery of Path MTU should be executed based on the path information, and setting the Path MTU on the basis of the path information. Jorgensen and Border do not teach or suggest the recited elements, and the recited elements are not inherent to TCP or TCP/IP. Therefore, Claim 22 is patentable over Jorgensen in view of Border.

Claim 23 recites a Path MTU discovery method comprising steps of receiving an advertisement of information about an entry point of multiple tunnels, determining whether a discovery of a Path MTU should be executed based on the number of entry points of multiple tunnels, and calculating the Path MTU based on the number of entry points of multiple tunnels. Jorgensen and Border do not teach or suggest the recited elements, and the recited elements are not inherent to TCP or TCP/IP. Therefore, Claim 23 is patentable over Jorgensen in view of Border.

Claim 24 recites a Path MTU discovery method comprising the steps of receiving an advertisement of link MTU of a link connected to each node on a path, setting a Path MTU out of the link MTUs, and determining whether a discovery of a Path MTU should be executed based on the Path MTU. Jorgensen and Border do not teach or suggest the recited elements, and the recited elements are not inherent to TCP or TCP/IP. Therefore, Claim 24 is patentable over Jorgensen in view of Border.

New Claims 25 and 26 are supported by the original disclosure and add no new subject matter.<sup>3</sup> New Claims 25 and 26 depend from Claim 1. Therefore, new Claims 25 and 26 are patentable for at least the reasons discussed above with respect to Claim 1. In addition, new Claims 25 and 26 recite subject matter that further defines over Jorgensen and Border.

Claim 25 recites a destination node that receives an advertisement of path information including information about link MTUs, path MTU, and/or entry points of multiple tunnels. As conceded in the outstanding Office Action, Jorgensen does not receive an advertisement of path information. Further, Border does not cure the deficiencies of Jorgensen. Border describes receiving advertisements from the host regarding maximum segment size and

---

<sup>3</sup> See specification at page 13, lines 10-14 and page 2, line 26 to page 3, line 8.

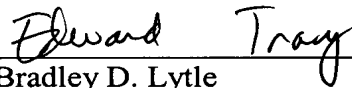
receive window.<sup>4</sup> In addition, receiving an advertisement of path information as described in Claim 25 is not inherent to TCP or TCP/IP. Therefore, new Claim 25 further defines over Jorgensen and Border.

Claim 26 recites the destination node as a mobile node. Jorgensen describes point to multi-point communication but does not describe a mobile destination node. Border describes communication from a local host to a remote host but also does not describe a mobile destination node. Further, a mobile destination node is not inherent to TCP or TCP/IP. Consequently, new Claim 26 further defines over Jorgensen and Border.

Accordingly, the outstanding rejections are traversed and the pending claims are believed to be in condition for formal allowance. An early and favorable action to that effect is, therefore, respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



Bradley D. Lytle  
Attorney of Record  
Registration No. 40,073

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)

Edward W. Tracy, Jr.  
Registration No. 47,998

---

<sup>4</sup> See Border at paragraphs 0102 and 0217.